

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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SHAFIQUE AHMED and MAYRA MUNOZ,
Plaintiff(s),
v.
RICHLAND HOLDINGS, INC.,
Defendant(s).

Case No. 2:19-CV-1925 JCM (DJA)

ORDER

Presently before the court is defendant Richland Holdings, Inc. d/b/a AcctCorp of Southern Nevada's ("Richland") motion for attorneys' fees from plaintiffs Shafique Ahmed ("Ahmed") and Mayra Munoz ("Munoz") (collectively "plaintiffs"), and their counsel ("plaintiffs' counsel"). (ECF No. 50). Plaintiffs' counsel filed a response (ECF No. 57), to which Richland replied (ECF No. 58).

Also before the court is plaintiffs' counsel's motion for leave to file a surreply (ECF No. 59), to which Richland filed a response (ECF No. 62). No replies have been filed, and the time to do so has passed.¹

Also before the court is Munoz's motion to defer time to file a response to Richland's motion for fees. (ECF No. 53). Richland filed a response (ECF No. 54), to which Munoz replied (ECF No. 55).²

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¹ The court GRANTS the motion for a surreply. Richland raised new issues in its reply brief that warranted a reply from plaintiffs' counsel.

² As Munoz settled, her motion is moot as to her need to respond. However, the court GRANTS Munoz's motion to the extent it gave plaintiffs' counsel additional time to respond to Richland's arguments regarding counsel's own liability.

1 **I. Background**

2 The instant matter arises from Richland's alleged violations of the Fair Debt Collection
3 Practices Act, 15 U.S.C § 1692e, 1692e(2)(A), 1692(e)10, 1692f(1) ("FDCPA"). (ECF Nos. 1,
4 39).

5 Plaintiffs entered into separate contracts with RC Willey ("RCW") to purchase home
6 furnishings on credit. (*Id.*). Plaintiffs signed identical agreements both containing collection fee
7 clauses when obtaining their loans. Plaintiffs alleged that their respective contracts with RCW
8 contain an unconscionable liquidated damages penalty, in the form of a collection fee by AcctCorp,
9 which is set at a specific flat rate of 50%, in addition to attorneys' fees and costs. (ECF Nos. 1,
10 6).

11 Plaintiffs each became delinquent on payments, and RCW assigned their debt to Richland
12 for collection. (ECF No. 8). RCW and Richland's collection agreement states that Richland will
13 pursue collection of RCW's debt in exchange in exchange for a collection fee of 50% of the
14 outstanding debt, contractual interest, and attorney's fees. (ECF No. 1).

15 Unable to collect payment from plaintiffs, Richland sued them in state court. (ECF No.
16 39). Plaintiffs responded by filing FDCPA counterclaims arguing that the collection fee was an
17 illegal misrepresentation of their debts, which the state court dismissed for lack of jurisdiction.
18 (ECF No. 8).

19 On October 31, 2019, plaintiffs initiated their instant case. (ECF No. 1). On June 17, 2020,
20 this court granted Richland's request to dismiss all claims. (ECF No. 25). Plaintiffs soon amended
21 their complaint with leave from this court. (ECF Nos. 38, 39). On Richland's motion, the court
22 then dismissed all claims in the amended complaint. (ECF No. 48).

23 After judgment was entered, Richland moved for attorneys' fees (ECF No. 50) and Munoz
24 appealed the dismissal (ECF No. 51). Munoz then moved to defer time to respond to Richland's
25 motion (ECF No. 53), but ultimately settled all claims with Richland before responding (ECF No.
26 56).³ Meanwhile, apparently experiencing difficulties with contacting Ahmed, plaintiffs' counsel

27
28 ³ Munoz also stipulating to dismiss her appeal. (ECF Nos. 56; 63).

1 responded to Richland's motion (ECF No. 57), and after Richland replied, moved for a surreply
2 (ECF No. 59).

3 The court now addresses Richland's motion for attorneys' fees.

4 **II. Legal Standard**

5 Under the FDCPA, if the court finds that a plaintiff brought an action in bad faith and for
6 the purpose of harassment, a prevailing defendant is entitled to "attorney's fees reasonable in
7 relation to the work expended and costs." 15 U.S.C. § 1692k(a)(3). Such an award is mandatory
8 under the FDCPA. *Graziano v. Harrison*, 950 F.2d 107, 113 (3d Cir. 1991); *see also De Jesus v.*
9 *Banco Popular de Puerto Rico*, 918 F.2d 232, 234 (1st Cir. 1990).

10 Under 28 U.S.C. § 1927:

11 Any attorney or other person admitted to conduct cases in any court of the United
12 States . . . who so multiplies the proceedings in any case unreasonably and
vexatiously may be required by the court to satisfy personally the excess costs,
expenses, and attorneys' fees reasonably incurred because of such conduct.

13 *Id.*

14 "Section 1927 authorizes federal courts to punish barratry by requiring offending lawyers
15 personally to satisfy their opponents' litigation debts. It applies in any proceeding in federal court,
16 operates solely upon attorneys, rather than their clients, and applies with equal force against
17 winners and losers." *Schutts v. Bently Nev. Corp.*, 966 F. Supp. 1549, 1558 (D. Nev. 1997).

18 "Courts of justice are universally acknowledged to be vested, by their very creation, with
19 power to impose silence, respect, and decorum, in their presence, and submission to their lawful
20 mandates," power "governed not by rule or statute but by the control necessarily vested in courts
21 to manage their own affairs so as to achieve the orderly and expeditious disposition of cases."
22 *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991) (internal quotations and citations omitted).

23 **III. Discussion**

24 As an initial matter, Munoz and Richland have settled "with each party to bear its own
25 attorney's fees and costs." (ECF No. 56). Therefore, the court addresses Richland's motion to the
26 extent it seeks fees from Ahmed and plaintiffs' counsel.

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1 a. Richland is not entitled to fees under Ahmed's home furnishing contract

2 Richland first argues that the underlying home furnishing contract entitles it to attorneys'
3 fees for defending itself in this matter because it relates to Richland's debt collection efforts. (ECF
4 No. 50 at 9). The court disagrees.

5 The contract provides that:

6 In the event you[—Richland—]are required to instigate legal action or to
7 take other means to collect amounts I[—Ahmed—]owe you. I agree to pay all your
8 costs of collection, including, but not limited to, a collection agency fee assessed
9 by a collection agency and/or reasonable attorney fees, with or without suit,
10 together with all unpaid interest and court costs.

11 (ECF No. 6-2 at 4).

12 While Richland argues that this matter is “interrelated” with its debt collection efforts, the
13 claims here are not the same as Richland's attempts to collect on the underlying debts. The parties
14 already litigated that issue in the Nevada state courts, and Richland already secured an award of
15 attorneys' fees. (*See* ECF No. 50 at 5).

16 Conversely, this matter concerns allegations that Richland violated the FDCPA. Defending
17 itself in this matter did not require Richland to “instigate legal action . . . to collect amounts
18 [plaintiffs] owe” Accordingly, the court declines to grant attorneys' fees Richland's defending
19 itself in this matter based on Ahmed's home furnishing contract.

20 b. Richland is not entitled to fees under 15 U.S.C. § 1692k(a)(3)

21 Richland next argues that it is entitled to fees under 15 U.S.C. § 1692k(a)(3) because
22 Ahmed brought this suit against it in bad faith and for the purpose of harassment. (ECF No. 50 at
23 10). Richland argues that Ahmed retaliated against it for properly suing him to collect on his
24 delinquent debts by “filing baseless claims that have been rejected now by at least five judicial
25 officers in multiple forums.” (ECF No. 50 at 11). Richland distorts the procedural history it relies
26 on.

27 When Richland first sued Ahmed in state court, he answered by asserting a counterclaim
28 for violations of the FDCPA. (ECF No. 50 at 4). The state court then dismissed his counterclaim
with what could be seen as an instruction to refile in this court. (*See* ECF No. 8-4 (dismissing the
FDCPA claim “without prejudice for [Ahmed] to file an action in a court of proper jurisdiction”)).

1 Ahmed then filed his claims in this court and opposed Richland's motion to dismiss those claims
2 with support from persuasive authority that this court declined to follow. (*See* ECF Nos. 6, 48).

3 While Ahmed's claims were ultimately unsuccessful, Richland fails to persuade this court
4 that he brought those claims in bad faith and for the purpose of harassment. Accordingly, the court
5 declines to grant attorneys' fees under 15 U.S.C. § 1692k(a)(3).

6 c. Richland is not entitled to fees under 28 U.S.C. § 1927

7 Richland next argues that it is entitled to attorneys' fees under 28 U.S.C. § 1927 because
8 plaintiffs' counsel unreasonably and vexatiously multiplied proceedings. (ECF No. 50 at 12).
9 Plaintiffs' counsel argues that she did not vexatiously multiply these proceedings because "[t]he
10 record shows that these simple proceedings consisted of a complaint and motion to dismiss, an
11 amended complaint and motion to dismiss." (ECF No. 57 at 15). The court agrees with plaintiffs'
12 counsel.

13 The docket shows no frivolous discovery motions, meritless demands for hearings, or
14 anything of the sort that vexatiously multiplied these proceedings. Though the court did not
15 specifically grant leave to amend in its order dismissing the original complaint, plaintiffs
16 ultimately obtained leave to amend. (ECF No. 38). Though plaintiffs' amended complaint was
17 ultimately dismissed, counsel's arguments in opposition of dismissal were not so futile to be
18 considered bad faith. As far as counsel's filing the response to Richland's motion, counsel
19 understandably defended herself from a motion seeking attorneys' fees that she would be
20 independently liable for. (*See* ECF No. 57).

21 Richland also fails to persuade the court that plaintiffs' counsel acted in bad faith.
22 Accordingly, the court declines to grant attorneys' fees under 28 U.S.C. § 1927.

23 d. Richland is not entitled to fees under the court's inherent power

24 Finally, as the court does not find bad faith on behalf of Ahmed or plaintiffs' counsel, it
25 declines to impose attorneys' fees under its inherent power. Accordingly, the court denies
26 Richland's motion for attorney's fees.

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1 **IV. Conclusion**

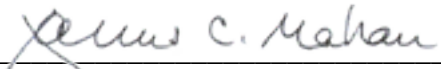
2 Accordingly,

3 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Richland's motion for
4 attorneys' fees (ECF No. 50) be, and the same hereby is, DENIED.

5 IT IS FURTHER ORDERED that plaintiffs' counsel's motion for leave to file a surreply
6 (ECF No. 59) be, and the same hereby is, GRANTED.

7 IT IS FURTHER ORDERED that Munoz's motion to defer time to respond (ECF No. 53)
8 be, and the same hereby is, GRANTED.

9 DATED February 23, 2022.

10 
11 UNITED STATES DISTRICT JUDGE